

26-42-101. Title.

This chapter is known as "Civil Penalties for Tobacco Sales to Underage Persons."

Enacted by Chapter 319, 1998 General Session

26-42-102. Definitions.

As used in this chapter:

- (1) "Commission" means the Utah State Tax Commission.
- (2) "Employee" means an employee of a licensee.
- (3) "Enforcing agency" means the state Department of Health, or any local health department enforcing the provisions of this chapter.
- (4) "Licensee" means a person licensed:
 - (a) under Section 59-14-201 to sell cigarettes at retail; or
 - (b) under Section 59-14-301 to sell tobacco products at retail.
- (5) "License to sell tobacco" or "license" means a license issued:
 - (a) under Section 59-14-201 to sell cigarettes at retail; or
 - (b) under Section 59-14-301 to sell tobacco products at retail.
- (6) "Tobacco" means cigarettes or tobacco products as defined in Section 59-14-102.

Enacted by Chapter 319, 1998 General Session

26-42-103. Violations and penalties -- Imposition by enforcing agency and tax commission.

- (1) If, following an investigation or issuance of a citation or information under Section 77-39-101, an enforcing agency determines under Section 26-42-104 that a licensee or any employee has sold tobacco to a person younger than 19 years of age, as prohibited by Section 76-10-104, the enforcing agency may impose upon the licensee the following administrative penalties:
 - (a) upon the first violation, a penalty of not more than \$300;
 - (b) upon a second violation at the same retail location, and within 12 months of the first violation, a penalty of not more than \$750; and
 - (c) upon a third or subsequent violation at the same retail location and within 12 months of the first violation, a penalty of not more than \$1,000.
- (2) The enforcing agency shall notify the commission in writing of any order or order of default finding a violation of Subsection (1) which is a third or fourth violation.
- (3) The commission, upon receipt of the written notification under Subsection (2), shall take action under Section 59-14-203.5 or 59-14-301.5 against the license to sell tobacco:
 - (a) by suspending the licensee's license to sell tobacco at that location for not more than 30 days, upon receipt of notification of a third violation under Subsection (1)(c); and
 - (b) by revoking the license to sell tobacco at that location held by the licensee, including any license under suspension, upon receipt of notification of a fourth violation under Subsection (1)(c).

(4) When the commission revokes a license under Subsection (3)(b), the commission may not issue to the licensee, or to the business entity using the license that is revoked, a license under Section 59-14-202 or 59-14-301 to sell tobacco at the location for which the license was issued for one year after:

(a) the day on which the time for filing an appeal of the revocation ends; or
(b) if the revocation is appealed, the day on which the decision to uphold the revocation becomes final.

(5) This section does not prevent any bona fide purchaser of the business, who is not a sole proprietor, director, corporate officer, or partner or other holder of significant interest in the entity selling the business, from immediately applying for and obtaining a license to sell tobacco.

Amended by Chapter 96, 2011 General Session

26-42-104. Enforcement by state and local health departments.

The state Department of Health and the local health departments shall enforce this chapter under the procedures of Title 63G, Chapter 4, Administrative Procedures Act, as an informal adjudicative proceeding, including:

- (1) notifying licensees of alleged violations of Section 26-42-103;
- (2) conducting hearings;
- (3) determining violations of this chapter; and
- (4) imposing civil monetary administrative penalties.

Amended by Chapter 382, 2008 General Session

26-42-105. Hearing -- Evidence of criminal conviction.

(1) At a civil hearing conducted under Section 26-42-104, evidence of the final criminal conviction of a licensee or employee for violation of Section 76-10-104 at the same location and within the same time period as the location and time period alleged in the civil hearing for violation of Section 26-42-103 is prima facie evidence of a violation of Section 26-42-103.

(2) If the licensee has been convicted of violating Section 76-10-104 prior to a finding of a violation of Section 26-42-103, the licensee may not be assessed a monetary penalty under this chapter for the same offense for which the conviction was obtained.

Enacted by Chapter 319, 1998 General Session

26-42-106. Recognition of licensee's training program.

(1) In determining the amount of the monetary penalty to be imposed for an employee's violation of Section 26-42-103, the hearing officer shall reduce the penalty by at least 50% if he determines:

(a) the licensee has implemented a documented employee training program;
and

(b) the employee has completed that training program within 30 days of commencing duties of selling tobacco products.

(2) (a) If the hearing officer determines under Subsection (1), regarding a first offense at a location, that the licensee has not implemented a documented training program with a written curriculum for employees at that location regarding compliance with this chapter, the hearing officer may suspend all or a portion of the monetary penalty, contingent upon the licensee's initiating a training program for employees at that location within 30 days after the hearing date.

(b) If the hearing officer determines at a subsequent hearing that the licensee has not implemented the training program within the time period required under Subsection (2)(a), the suspended monetary penalty shall be promptly imposed, unless the licensee demonstrates good cause for granting an extension of time for implementation of the training program.

Enacted by Chapter 319, 1998 General Session

26-42-107. Allocation of civil penalties.

Civil monetary penalties collected under this chapter shall be allocated as follows:

(1) if a local health department conducts an adjudicative proceeding under Section 26-42-104, the penalty shall be paid to the treasurer of the county in which the violation was committed, and transferred to:

(a) the local health department if it conducts a civil hearing under Section 26-42-104 alone; or

(b) in equal portions to the local health department and the other agencies that participated in the hearing process;

(2) if the state Department of Health conducts a civil hearing under Section 26-42-104, the penalty shall be deposited in the state's General Fund, and may be appropriated by the Legislature to the state Department of Health for use in enforcement of this chapter; and

(3) if the civil penalty involves suspension or revocation of a license to sell tobacco under Section 59-14-203.5 or 59-14-301.5, half of the penalty shall be paid to the commission, and the other half shall be allocated under Subsection (1) or (2), as appropriate.

Enacted by Chapter 319, 1998 General Session